BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:	)	
	)	
Application by New York Telephone Company	)	
(d/b/a Bell Atlantic – New York), Bell Atlantic	)	CC Docket No. 99-295
Communications, Inc., NYNEX Long Distance	)	
Company, and Bell Atlantic Global Networks,	)	
Inc., for Authorization to Provide In-Region	)	
InterLATA Services in New York	)	

JOINT AFFIDAVIT OF ERIC H. GEIS AND ROBERT WILLIAMS ON BEHALF OF RHYTHMS LINKS INC.

We, Eric H. Geis and Robert Williams, being first duly sworn upon oath, do hereby depose and state as follows:

QUALIFICATIONS OF ERIC H. GEIS

1. I, Eric H. Geis, am the Secretary and Treasurer of Rhythms Links Inc. f/k/a ACI Corp. ("Rhythms"), a wholly owned subsidiary of Rhythms NetConnections Inc. My business address is 6933 S. Revere Parkway, Englewood, CO 80112. I am responsible for the deployment of Rhythms' data network in New York and the rest of the country.

2. I have twenty-five years of operating experience in telecommunications, working for regulated telephone companies, as well as for manufacturers and suppliers providing products and services to the telecommunications industry. I am a founder of Rhythms, and have been an officer since its founding in 1997. I am also on the Board of Directors for another competitive local exchange carrier ("CLEC"), Net2000, based in McLean, Virginia. My qualifications and business experiences are attached to my testimony as Exhibit EHG-RW-1.

3. Along with Paul Bannwart, I testified (in written form and orally subject to cross-examination) on behalf of Rhythms (then operating in New York under the name ACI Corp.) in the New York Public Service Commission's ("NYPSC") review of New York Telephone Company's Section 271 Petition in Case No. 97-C-0271.[1]

QUALIFICATIONS OF ROBERT WILLIAMS

4. I, Robert Williams, am the Director National Deployment Eastern Region of Rhythms. My business address is 8605 Westwood Center Drive, Suite 300, Vienna, VA 22182. I am responsible for negotiation, management, and execution of interconnection agreements and associated issues between Rhythms and ILEC phone companies in the eastern third of the United States. I am also responsible for all physical collocation issues between Rhythms and ILECs, including filing collocation applications, scheduling collocation, exchanges of information, billing and turn-over of collocation from ILECs to Rhythms. Further, I am responsible for methods and procedures for ordering, provisioning, delivery, and maintenance of unbundled network element loops between Rhythms and ILECs. Specifically, I handle all of these matters for Rhythms in dealing with Bell Atlantic, BellSouth, and Sprint. In particular, I have personally participated in the DSL Collaborative sponsored by the New York Public Service Commission.[2]

5. I have seventeen years of business and operations experience, mostly telecommunications, working as an Officer in the United States Navy, as well as for regulated

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[1] *Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of New York*, New York Public Service Commission Case 97-C-0271 [hereinafter "BA-NY 271 State Case"].

[2] *See infra* ¶ 7.

telephone companies. On Aug. 23, 1999, I began working for Rhythms. My qualifications and prior business experiences include:

- Jan. 1999 – Aug 1999: Senior Manager, Data Network Implementation, Global One, Reston, VA
- Dec. 1996 – Dec. 1998: Senior Manager, Local Network Implementation, MCI, Reston, VA
- Dec. 1995 – Dec. 1996: Manager, Global Project Implementation, MCI, Reston, VA
- Feb. 1994 – Dec. 1995: Project Manager, Global Project Implementation, MCI, Reston, VA
- June 1991 – Feb. 1994: Project Manager, Pfizer Inc., Parsippany, NJ
- Dec. 1983 – June 1991: Officer, United States Navy

PURPOSE AND SUMMARY OF RECOMMENDATIONS

6. The purpose of this Affidavit is to explain how Bell Atlantic – New York d/b/a New York Telephone Company ("BA-NY") continues to fall short of full implementation of the competitive checklist set forth in Section 271(c)(2)(B) of the Telecommunications Act of 1996 (the "Act"). This Affidavit focuses on the shortcomings of BA-NY in pre-ordering, ordering, and provisioning digital subscriber line loops ("DSL" or "xDSL") and responds, where appropriate, to specific statements made by BA-NY (i) throughout the proceedings in the BA-NY 271 State Case, (ii) in its recent tariff filing[3] and supporting affidavit[4] purporting to offer

[3] *New York Telephone Company Tariff P.S.C. No. 916*, Revisions (Issued Aug. 30, 1999) (attached hereto at Exhibit "EHG-RW-2") [hereinafter "DDL Tariff"]. The NYPSC is currently examining the appropriateness of the non-recurring charges in the DDL Tariff in NYPSC Case 98-C-1357. Moreover, the NYPSC has been conducting a detailed review of DSL issues in its DSL Collaborative meetings which began on August 10, 1999 as a direct outgrowth of the 271 State Case and have continued on a bi-weekly basis since then.

[4] *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Case 98-C-1357, Bell Atlantic – New York's Joint Affidavit in Support of Proposed Rates for ADSL-Qualified, HDSL-Qualified, and Digital-Designed Links (Sept. 13, 1999) (attached hereto at Exhibit "EHG-RW-3") [hereinafter "DDL Affidavit"].

rates, terms and conditions for DSL loops, and (iii) in BA-NY's Section 271 Application and supporting documentation.[5]

7. It is important that the FCC recognize, just as the NYPSC has recognized, both the importance of the development of competition in the provision of advanced services in New York and the deficiencies of BA-NY's ability to adequately support the pre-ordering, ordering and provisioning of DSL services by data CLECs. As a direct outgrowth of the BA-NY 271 State Case, the NYPSC instituted a series of DSL collaborative sessions to address DSL loop qualification, DSL loop prices and DSL loop ordering and provisioning problems.[6] The DSL collaborative continues to proceed, with the next meeting scheduled for October 27, 1999. While some progress has been made through the DSL collaborative in addressing some specific provisioning issues, the collaborative was unsuccessful in resolving other key matters – most notably the ability of CLECs to obtain complete loop make-up information during the pre-ordering phase.

8. Instead, as BA-NY acknowledges,[7] it simply filed its DDL Tariff and DDL Affidavit, incorporating as part of its filings its unilateral proposal that severely limits CLEC real-time, electronic access to necessary loop make-up information and imposes improper, non-cost based charges to "de-condition" loops. The DDL Tariff and supporting DDL Affidavit have been contested by Rhythms and other parties and are part of an ongoing proceeding before the NYPSC in Case No. 98-C-1357, with hearings scheduled to begin on November, 3, 1999.

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[5] *Application by New York Telephone Company (d/b/a Bell Atlantic – New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York* (filed Sept. 29, 1999) [hereinafter the "Application"].

[6] *See* Application at 19; electronic mail message from Tim Zakriski, NYDPS Staff to All CLEC DSL Collaborative Participants, "DSL Collaborative Issues" (July 30, 1999) (attached hereto at Exhibit "EHG-RW-4").

[7] Application, Lacouture-Troy Decl. ¶¶ 83-84.

Specifically, Rhythms has demonstrated that the non-recurring prices proposed by BA-NY in its DDL Tariff and DDL Affidavit are not forward-looking, TELRIC rates and demonstrated numerous other shortcomings of the DDL Tariff and DDL Affidavit in the September 23, 1999 Affidavits of Terry L. Murray and of John C. Donovan and Joseph P. Riolo jointly filed with Covad Communications Company in Case No. 98-C-1357.[8]

9. Consequently, it is our opinion that, notwithstanding BA-NY's claims to the contrary in its Application to the Federal Communications Commission ("FCC"), *see* BA Brief at 8-39, BA-NY still has not established that it is providing or is able to provide all of the checklist items to data CLECs providing advanced services in a manner that fully complies with the requirements of the Act. BA-NY's failure to provide those items has slowed Rhythms' entry into the local telecommunications market in the state of New York.

10. Specifically, we will:

- Introduce and familiarize the Commission with Rhythms and its New York business plans;
- Demonstrate the critical role of the xDSL-based services that Rhythms plans to provide in New York in order to bring high-performance, high-speed data services to a broad market of New York consumers; and
- Address specific issues regarding high-speed digital services;

11. As discussed below, given the serious deficiencies in and protracted intervals associated with BA-NY's provisioning of loops for use by competitive CLECs offering

[8] *Proceeding on Motion of the Commission to Examine New York Telephone Company's Unbundled Network Elements*, Case 98-C-1357, Affidavit of Terry L. Murray in Support of the Joint Comments of Covad Communications Company and Rhythms Links Inc. Concerning the Proposed Rates of Bell Atlantic – New York for ADSL-Qualified, HDSL-Qualified, and Digital Designed Links (Sept. 23, 1999) (attached hereto at Exhibit "EHG-RW-5") [hereinafter "Murray Affidavit"]; *Proceeding on Motion of the Commission to Examine New York Telephone Company's Unbundled Network Elements*, Case 98-C-1357, Joint Affidavit of John C. Donovan & Joseph P. Riolo in Support of the Joint Comments of Covad Communications Company and Rhythms Links Inc. Concerning the Proposed Rates of Bell Atlantic – New York for ADSL-Qualified, HDSL-Qualified, and Digital

xDSL services, we do not believe the Commission can find that BA-NY has satisfied its checklist obligations for data CLECs or that its treatment of data CLECs is consistent with the public interest. Specifically, in order to meet its checklist obligations, BA-NY must:

- Provide CLECs with real-time electronic access to all necessary loop operations support systems and databases to ensure that CLECs can provide service to end users using the appropriate DSL technology without regard to BA-NY's DSL service deployment.
- Provide CLECs with loops that will support all types of xDSL services at cost-based rates that fully reflect TELRIC pricing principles; and
- Adopt and comply with a loop provisioning interval for xDSL loops that is no longer than five (5) business days.

12. We have numerous concerns about Rhythms' ability to maximize the availability of advanced services, including DSL, to a broad range of New York customers served by a variety of loop types. Our concerns fall into three general areas: (i) the inability of data CLECs to obtain necessary loop make-up data in a pre-order phase and at reasonable and non-discriminatory rates, terms and conditions in order to provision DSL services, (ii) the ability of data CLECs to provision *all* necessary DSL technologies, and (iii) inability of BA-NY to adequately or timely provision any form of DSL loop to data CLECs. We will summarize each of these concerns briefly.

13. First, as we describe below, BA-NY's "pre-qualification" loop procedures are insufficient for competitors seeking to provide an array of DSL services. Rhythms requires real-time access to basic loop make-up information, including (i) the loop length with bridged taps, (ii) the loop length without bridged taps, (iii) the length and location of bridges taps, (iv) the loop wire gauge and gauge changes, (v) the presence and location of load coils, (vi) the presence and location of repeaters, (vii) the presence and type of fiber digital loop carrier ("DLC")

Designed Links (Sept. 23, 1999) (attached hereto at Exhibit "EHG-RW-6") [hereinafter "Donovan/Riolo

systems and digital access main lines ("DAMLs"), and (viii) the alternative loops serving or capable of serving particular end-user locations. Real-time, electronic access to BA-NY's underlying databases containing this loop make-up information will enable Rhythms to determine what services to provision and how to provision such services to a particular end user. However, BA-NY fails to provide CLECs with this necessary information or access to such information to make these determinations in an efficient manner. Moreover, the limited information available to CLECs from BA-NY's Loop Qualification Database is only provided for loops served out of a limited number of central offices.

14. Second, as we discuss more fully below, BA-NY seeks to severely restrict the provision of DSL services by CLECs (i) by arbitrarily limiting the number of loops over which CLECs may provide DSL services, (ii) by limiting the types of DSL services CLECs may provide over such loops, and (iii) by charging exorbitant, non-cost based and non-TELRIC based non-recurring charges. Such practices are all designed to limit the number of DSL circuits provided by CLECs and to anticompetitively restrict the competitive threat data CLECs pose to BA-NY's significantly more expensive T-1 or DS-1 services.

15. Finally, BA-NY's consistent poor record in provisioning loops to carriers providing xDSL services is a significant barrier to scalable entry by data CLECs into the New York market.

DESCRIPTION OF RHYTHMS' BUSINESS

16. Rhythms received approval to operate as a competitive local exchange carrier from the NYPSC on May 20, 1998. Rhythms is a nationwide provider of high-performance, high-speed data services, primarily using DSL technology for high-speed access to

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Affidavit"].

and from the end users' desktops. Rhythms provides data networking solutions at a reasonable cost to residential and business consumers in New York and elsewhere. Rhythms does not focus solely on the Internet service provider market, but instead intends to provide broad market coverage—including suburban areas as well as metro areas—offering a full range of services. Rhythms' services will be used for: (1) the networking of remote locations for, among other things, telecommuting or work-at-home applications; (2) dedicated access to the Internet; and (3) dedicated "always-on" access to intranet-type networking solutions. Rhythms has begun to deploy its data networking services in New York markets.

17. In order to provide DSL services, Rhythms is dependent on the ILECs for three primary components. First, Rhythms leases "clean" copper loops of any length that are unfettered with any interfering loop equipment such as load coils and repeaters. Second, Rhythms needs to be able to collocate and maintain equipment at the central office end of the loop. Third, Rhythms often requires timely provision of unbundled transport facilities from the ILEC because competitive interoffice transport alternatives are unavailable.

18. Rhythms currently provides high-performance, high-speed data services in New York and throughout the United States. Rhythms began negotiating its interconnection agreement with BA-NY in November 1997, placed its first collocation application by BA-NY in July 1998 , and began offering service to New York consumers in March 1999.

19. Rhythms' provision of DSL services competes directly with Bell Atlantic's DSL services. Bell Atlantic recently rolled out its retail DSL offering, called InfoSpeed™ DSL service, throughout its region on a large scale and it is our understanding that Bell Atlantic introduced this service in New York in June 1999. BA-NY's InfoSpeed™ services are primarily for Internet access, where ISDN speeds are sufficient to upload and download

information from the Internet. Therefore, BA-NY's InfoSpeed™ is generally being deployed at ISDN-like speeds, which are considerably slower than those that DSL is capable of providing. In addition, for years most ILECs have provisioned 1.544 Mbps T-1 or DS-1 services using High bit rate DSL ("HDSL") technology. When DSL is deployed to its full capacity, it can often compete with much higher-priced ILEC T-1 offerings. Thus, BA-NY clearly has the incentives, recognized by the FCC, to impede rapid, full scale deployment of DSL. New York consumers, on the other hand, stand to garner substantial benefits from competitive high speed data offerings.

DESCRIPTION OF DSL TECHNOLOGIES

20. In New York, Rhythms provides high-speed data services using a variety of xDSL technologies. In order to understand why CLECs should be able to deploy various types of DSL, and to obtain them from BA-NY at reasonable, non-discriminatory rates, terms and conditions, the FCC must appreciate the significant differences in the types of DSL that are presently being deployed around the country. As we will describe below, these differences enable data carriers to provide a variety of services to a broader range of New York consumers.

21. DSL uses an ordinary existing copper loop to provide high-bandwidth digital transmission capabilities between the end user's premises and the ILEC central office. By "high-bandwidth," we mean the amount of information that can be carried on a circuit, usually expressed as bits per second ("bps"), thousands of bits per second ("Kbps"), or millions of bits per second ("Mbps"). DSL technologies provide a variety of bandwidths, in some cases equaling or exceeding 7 Mbps in one direction or 1.5 Mbps in both directions. In contrast, an analog voice-grade "plain old telephone service," or "POTS" circuit provides very limited throughput. Voice traffic occupies a narrow frequency spectrum, and analog modems are only able to

achieve somewhere close to 56 Kbps (and then only under ideal line conditions). DSL technologies, on the other hand, allow service providers like Rhythms to offer a variety of innovative high-bandwidth services while efficiently using the legacy copper loop infrastructure of the ILEC.

22. DSL technologies use two approaches in combination to yield high-bandwidth over ordinary legacy copper loops. First, unlike analog voice POTS service, DSL technologies use a much wider frequency spectrum as they transmit over these loops. Analog voice (and analog data) signals are transmitted over a narrow frequency range of 0 to 3,400 Hertz (1 Hertz=1 cycle per second). In contrast, DSL technologies use transmission frequencies between 0 and about 1 MHz.

23. Second, DSL technologies employ various approaches to line coding, the technique used to send bits of information over the copper wire. We will not attempt to discuss the technical details of the different line coding approaches, except to say that these line coding approaches have the effect of making DSL technologies more efficient, because they allow for more information (bits) to be transmitted across a given amount of frequency spectrum.

24. Rhythms has successfully and routinely deployed numerous types of DSL-based services on copper loops, including Asymmetric Digital Subscriber Line ("ADSL"), Rate Adaptive Digital Subscriber Line ("RADSL"), High bit rate Digital Subscriber Line ("HDSL"), Symmetric Digital Subscriber Line ("SDSL") and ISDN Digital Subscriber Line ("IDSL"). The acronym "xDSL" is used to describe the broad category of DSL technologies encompassing all of the above types of DSL-based services. Exhibit "EHG-RW-7" following this Affidavit provides a more detailed description of the these different DSL technologies.

25. To date, Rhythms has deployed ADSL (including RADSL), SDSL, and IDSL in New York. Although the particular type of DSL technology to be used is a function of a number of variables, Rhythms will typically use RADSL on shorter clean copper loops, ADSL or SDSL on clean copper loops of intermediate length, and IDSL on long loops or on loops that are carried on fiber DLC systems. Interestingly, the substantial technical innovation in the DSL field will continually extend the reach of these DSL technologies.

ALL DSL VARIETIES MUST BE AVAILABLE IN NEW YORK

26. From a marketing and customer service standpoint, it is critically important that Rhythms have the ability to offer this variety of DSL-based services. It is only by offering the full array of DSL technologies that Rhythms can serve a wide array of New York consumers and offer them the particular technology that both best suits their needs and is best suited for the loops available to them. For example, while ADSL, the most widely used DSL technology deployed by Rhythms, is generally offered to customers whose best available loop is within approximately 18,000 feet of a central office, IDSL, and in some circumstances SDSL, have longer effective reaches, up to more than twice that distance, and are therefore generally offered to customers further from the central office. These customers would largely be deprived of the benefits of high-speed technologies if Rhythms were prevented from offering these technologies and were forced to offer only the limited capabilities of DSL service at the anticompetitive rates, terms and conditions offered by BA-NY under its DDL Tariff.

27. Thus, CLECs must be permitted to offer the full panoply of DSL services and must not be constrained to deploy only those services the underlying ILEC has chosen to provide.[9] Yet, throughout its region, including in New York, BA-NY continues to take steps to

[9] *Implementation of the Local Competition Provisions of the 1996 Act*, First Report and Order, 11 FCC Rcd. ¶ 292 (1996) ("*Local Competition Order*").

limit CLEC deployment of DSL. For instance, as will be explained more fully later in our Affidavit, BA-NY has developed a "Loop Qualification Database" based almost exclusively upon the needs of BA-NY's InfoSpeed[tm] offering, not on the needs of CLECs. In addition, as detailed below, BA-NY's ADSL and HDSL offerings show BA-NY's DSL offerings to CLECs are grounded in its own retail plans, not the needs of CLECs. In fact, BA-NY's definition of its ADSL offering only permits CLECs to run transmission speeds on ADSL loops that are slower than the maximum speeds available for BA-NY's retail offering. Indeed, limiting the scope of BA-NY's DSL offerings to CLECs to its retail DSL offerings is entirely consistent with the express statement of the witness presented by Bell Atlantic-Pennsylvania.[10] Thus, underlying BA-NY's DSL offering is the presumption that BA-NY, not CLECs, will decide when and what services can be deployed over the unbundled loop. Therefore, BA-NY provides pre-qualification loop data on the technical parameters of its service choice and limits the loops over which CLECs may provide xDSL services. Accordingly, BA-NY's assertion that it has undertaken a "laborious," "office by office" survey to identify loops that *are* ADSL capable is misleading because BA-NY's inquiry focuses on those loops suitable for deployment of its more limited ADSL offerings.[11]

28. Rhythms, however, should not be arbitrarily limited in the DSL services it can provide by BA-NY's unilateral determinations of loop capabilities. Rhythms neither wants nor requests that BA-NY determine whether a loop is "qualified" to "meet specific technical

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[10] *Joint Petition of Nextlink Pennsylvania, Inc.; Senator Vincent J. Fumo; Senator Roger Madigan; Senator Mary Jo White; the city of Philadelphia; the Pennsylvania Cable & Telecommunications Associations; RCN Telecommunications Service of Pennsylvania, Inc.; Hyperion Telecommunications, Inc.; ATX Telecommunications; CTSI, Inc.; MCI Worldcom; and AT&T Communications of Pennsylvania, Inc. for Adoption of Partial Settlement Resolving Pending Telecommunications Issues*, Pennsylvania Public Utility Commission Docket No. P-00991648, BA-PA Witness Stern, BA-PA St. No. 3.0, p. 7.

[11] *See* Lacouture-Troy decl. ¶ 84; Application at 21.

criteria" established unilaterally by BA-NY.[12] Because Rhythms will provision the DSL-based service to the end-user, Rhythms—not BA-NY—must make the technical and business decisions regarding the suitability of the loop for DSL and the type of DSL service offered to the end user to meet customer needs. Rhythms is directly accountable to the customer and must be able to make changes or decisions based on customer needs and demands, independent of BA-NY decisions on loop characteristics. Rhythms' desire to make its own technical and business judgments regarding the type and quality of service it provides to its customers is not only reasonable, it is essential if Rhythms is to provide New York customers with one of the benefits of the 1996 Act: namely, improved service quality and choice for high speed data services – the very goals of the Telecommunications Act of 1996. Thus, Rhythms must retain the right – and must be able to obtain the loop make-up information necessary – to decide which xDSL services they wish to provision, and should have access to all loops capable of providing those xDSL services.

ACCESS TO LOOP MAKE-UP INFORMATION FOR COMPETITIVE DSL PROVIDERS

29. As indicated above, data CLECs such as Rhythms require real-time, electronic access to basic loop make-up information, including (i) the loop length with bridged taps, (ii) the loop length without bridged taps, (iii) the length and location of bridges taps, (iv) the loop wire gauge and gauge changes, (v) the presence and location of load coils, (vi) the presence and location of repeaters, (vii) the presence and type of fiber digital loop carrier ("DLC") systems and digital access main lines ("DAMLs"), and (viii) the alternative loops serving or capable of serving particular end-user locations. Data CLECs must be able to obtain this information during the pre-ordering phase to determine what services to provision and how to

[12] *See* Lacouture-Troy Decl. ¶ 80.

provision such services to a particular end user when that end user first contacts the CLEC. In particular, as the last item in the list of necessary loop make-up information indicates, CLECs must be able to obtain the necessary loop make-up information for all loops that are capable of providing service to a particular end-user. It is only with the loop make-up information for all possible loops that Rhythms can make an informed decision as to which loop to lease and what service it can provide to the end-user.

30. By failing to provide CLECs with the real-time access to such loop make-up information, BA-NY inhibits CLECs from making these determinations in an efficient manner. For this reason, BA-NY's assertions that it is "providing CLECs with information about ADSL-capable loops,"[13] and that it "provides competing carriers with all the same information that is available to its own retail marketing representatives"[14] misses the point entirely.

31. Throughout the meetings of the DSL collaborative as well as in BA-NY's DDL Tariff and DDL Affidavit, BA-NY claims to provide CLECs with access to loop qualification information as follows:

- Mechanized Loop Qualification – CLECs may submit a query to BA-NY's Loop Qualification Database and will then receive only "(a) total metallic loop length (including bridged taps), and (b) qualification of the loop per BA-NY standards (yes/no)."[15] CLECs do not receive loop length data that indicates the length without bridged taps; rather CLECs receive a length number that may contain up to 6,000 feet of bridged taps. Further, CLECs to not receive any data on the length of loops that BA-NY determines are "unqualified."

- Manual Loop Qualification – CLECs may request a loop be qualified manually if a loop is not in the Loop Qualification Database or if they do not use the Database. "Information available through Manual Loop Qualification includes (a) total metallic loop length (including length of bridged taps), (b) presence of load coils (yes/no), (c)

[13] Lacouture-Troy Decl. ¶ 84.

[14] Application at 21.

[15] DDL Affidavit ¶ 24.

presence of Digital Loop Carrier equipment (yes/no), and (d) qualification per BA-NY's standards [yes/no]."[16] Again, CLECs receive no information on the amount of bridged taps on the loop.

- Engineering Query and Engineering Work Order – If a CLEC desires information beyond that provided by the Manual Loop Qualification, the CLEC may submit an Engineering Query. The Engineering Query will return "[i]nformation such as amount and location of bridged taps, number and location or load coils, location of DLC, or cable gauge at specific locations."[17]

32. BA-NY has proposed charging a $0.36 Mechanized Loop Qualification monthly *recurring* charge for "*all loops that are utilized to provide ADSL-based services*," a $40.37 non-recurring charge for each Manual Loop Qualification, and a $194.95 non-recurring charge for the Engineering Query and Engineering Work Order.[18] Not only are these charges all inappropriate and excessive, but it is particularly appalling that BA-NY intends to charge not a database dip for access to its Loop Qualification Database, but rather a monthly recurring charge for accessing the Database, thereby increasing the cost of all DSL loops. Equally egregious, BA-NY intends to impose this charge on all loops used to provide DSL services, regardless of whether the CLEC utilized the Mechanized Loop Qualification process. Moreover, for instances in which a CLEC is unable or chooses not to use the Loop Qualification Database, in addition to charging the rates indicated above, BA-NY proposes adding a 3 business day pre-ordering and ordering interval to perform both the Manual Loop Qualification and the Engineering Query.

33. Thus, BA-NY essentially proposes a tiered approach to information data. CLECs may access a database specifically designed for BA-NY's roll out of its limited ADSL offering. The result of this one time query of the database is a "yes/no" response indicating

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[16] *Id.* ¶ 29.

[17] DDL Tariff § 5.5.1.1(D)(2)(b).

[18] DDL Affidavit ¶ 27 and Exhibit A, p. 3 (emphasis added). Without any explanation, these rates differ from those BA-NY filed in its DDL Tariff for the same function.

merely whether the loop satisfies the conditions for BA-NY's retail DSL offering, and if so, the length of the loop including perhaps up to 6,000 feet of bridged taps. No other loop make-up information is provided.

34. Furthermore, the loops contained in the database, however, are only available for a limited universe of all BA-NY central offices. For loops served out of central offices not input into the database, CLECs may obtain some loop make-up information through the Manual Loop Qualification Process. If a CLEC is not satisfied with the information returned by either the Mechanized Loop Qualification or the Manual Loop Qualification, the CLEC may request that an Engineering Query and an Engineering Work Order be performed. Regardless of whether a CLEC requests a Manual Loop Qualification or an Engineering Query and Engineering Work Order or both sets of functions, the CLEC is forced to non-electronically "qualify" the loop over a several day period prior to the loop order flowing through BA-NY's systems.

35. Perhaps the greatest concern to this multi-tiered process arises from the apparently limited nature of the loop data BA-NY proposes to provide in its Loop Qualification Database. Specifically, BA-NY's description clearly indicates that its loop database is structured specifically to support its *own* DSL offering. Indeed, the Pennsylvania Public Utility concluded as much when it cited a Bell Atlantic-Pennsylvania witness to determine "that this database is essentially structured with loop qualification information that will be of primary value to the provision of BA-PA's own retail ADSL services."[19] Thus, while it is extremely helpful to BA-

[19] *Joint Petition of Nextlink Pennsylvania, Inc.; Senator Vincent J. Fumo; Senator Roger Madigan; Senator Mary Jo White; the city of Philadelphia; the Pennsylvania Cable & Telecommunications Associations; RCN Telecommunications Service of Pennsylvania, Inc.; Hyperion Telecommunications, Inc.; ATX Telecommunications; CTSI, Inc.; MCI Worldcom; and AT&T Communications of Pennsylvania, Inc. for Adoption of Partial Settlement Resolving Pending Telecommunications Issues*, Pennsylvania Public Utility Commission Docket No. P-00991648,

NY's retail operations to have a database that indicates which loops can support which *BA-NY services*, this information is of very little use to CLECs with different, and broader, service parameters. BA-NY does not provide loop data designed to support CLEC-specific offerings, which vary substantially from BA-NY's offerings. Indeed, BA-NY does not even provide electronic access to data sufficient to allow CLECs to make their own service judgments.

36. In fact, while Rhythms requested real-time, mediated (read-only), electronic access to BA-NY's loop and outside plant databases, such as LFACS and TIRKS, as far back as during its interconnection negotiations with BA-NY, Rhythms has repeatedly been refused such electronic access to such BA-NY databases. Moreover, Rhythms and various other CLECs collectively requested electronic access to such databases during the DSL Collaborative and again were rebuffed by BA-NY. Thus, while BA-NY engineers may access such databases while performing Manual Loop Qualifications and Engineering Queries, CLECs are not afforded access to such databases and therefore are denied any meaningful access to the necessary loop information in BA-NY's existing databases. Rather, the only information provided by BA-NY electronically is whether a loop meets the service characteristics BA-NY has identified for its retail offerings and, if so, the length of the loop (which will always return less than 18,000 feet).

37. While this information may be useful to BA-NY's retail operations, it is not particularly so for CLECs. Data CLECs simply need real-time, electronic access to BA-NY's loop databases, such as LFACS and TIRKS. It is only with such real-time, electronic access to BA-NY's loop databases that Rhythms will have rapid and efficient access to pre-ordering information about the technical make-up of a potential customer's loop, and to on-line ordering and maintenance systems. Thus, Rhythms will need specific information and data

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Order and Opinion (Sept. 30, 1999) at 116 (citing BA-PA Witness Stern, PA-PA St. No. 3.0, p. 25. *See generally* Tr. 1014-1020.)

about BA-NY's outside plant during the pre-ordering and ordering process to make effective business decisions so that we can provision the best possible service to our customers. BA-NY's loop qualification database does not meet this need.

38. As discussed above and in Exhibit EHG-RW-7, different xDSL technologies are appropriate, depending on the characteristics of particular loops. Loop make-up information is required so that Rhythms can determine which implementation of xDSL technology is appropriate, or indeed if the loop in question is capable of supporting any particular xDSL technology. Based on the loop make-up information, Rhythms will use a different technology to provide service to an end user with a very long loop, or a loop served by DLC, than one with a short, clean loop. Also, to allow Rhythms to make service guarantees to its customers regarding speed of digital transmission and reliability, Rhythms must know the loop makeup information. Rhythms must have this information to make its own business decision about the choice of appropriate DSL-based service for the particular loop, as opposed to being forced to settle for BA-NY's determinations of which DSL service Rhythms should deploy.

39. Access to information about the physical make-up of the loops allows Rhythms' customer service representatives to notify customers in a timely manner regarding the Rhythms services for which they are eligible. This access will put Rhythms at parity with BA-NY, because customers can be served just as quickly by Rhythms as by BA-NY, or more importantly, just as quickly as Rhythms can serve them with no artificial handicaps or delays imposed by BA-NY. Without timely, complete loop make-up information, Rhythms would have to "guess" as to the loop's characteristics and associated capabilities each time it ordered a loop, and if we guess wrong, we would have to keep guessing until we got it right. By the time the

guessing game is complete, precious time elapses and Rhythms could lose a potential customer. If Rhythms' potential customers are forced to wait several days before learning whether they can get service from Rhythms, and what services are available, the customers will likely not choose Rhythms, but will instead go with a carrier that has the information required to make a quick judgement, such as BA-NY.

40. This (in addition to the excessive charges) is the fatal flaw with the Manual Loop Qualification and Engineering Query – they each may take up to 3 business days. Such long intervals preclude Rhythms from informing the customer during the initial contact whether and what type of DSL services Rhythms can provide to that customer. The availability of loop make-up information for the initial contact with potential customers is critical to Rhythms' ability to win new customers and enable Rhythms to compete on an equal footing with Bell Atlantic.

41. As an example, we are familiar with the experience of two customers who ordered DSL from Pacific Bell, using an electronic ordering system. Those customers were able to complete the entire process of pre-ordering and ordering, including obtaining loop make-up information, placing the order, receiving a price quote and due date, in less than 14 minutes, start to finish. It goes without saying that the ability to verify loop make-up and complete the order while the customer is still on the line obviously has a significant sales impact.

42. Rhythms strongly supports electronic access to loop make-up and other pre-ordering information. Real-time, electronic access allows CLECs greater flexibility in structuring their workforce, because on-line systems could be used 24-hours per day to research the suitability of customer loops to support DSL. Electronic systems can also support much greater volumes of inquiries than will manual systems. In addition, ILECs may have internal

electronic pre-ordering and ordering systems available, thereby giving them an advantage in serving customers over competitors such as Rhythms. Time is of the essence in providing pre-ordering information, because the market for high-speed data services, in particular DSL-based services, is growing larger and more competitive every day.

43. An electronic ordering system should provide 24-hour, on-line access to an ILEC database via a computer. Any CLEC trying to determine whether a customer's loop is suitable for DSL should be able within a few seconds to access information about the technical make-up of a particular customer's loop. Loop make-up information should identify equipment and technical characteristics associated with the loop. That information should include the following: (i) the loop length with bridged taps, (ii) the loop length without bridged taps, (iii) the length and location of bridges taps, (iv) the loop wire gauge and gauge changes, (v) the presence and location of load coils, (vi) the presence and location of repeaters, (vii) the presence and type of fiber digital loop carrier ("DLC") systems and digital access main lines ("DAMLs"), and (viii) the alternative loops serving or capable of serving particular end-user locations. This information resides in BA-NY's systems and databases, such as LFACS or TIRKS. Rhythms needs real-time, electronic mediated access to these existing systems. Such technical elements affect the usability of the loop, and in some instances may preclude the provision of DSL services. Therefore, Rhythms must have access to exact loop make-up information.

44. The BA-NY Loop Qualification Database gives CLECs access to a pre-qualification loop databases through a Graphical User Interface ("GUI") on the World Wide Web or through EDI application-to-application interfaces. Web GUI access does not provide a real-time means of obtaining loop make-up information, and is cumbersome because it involves both delay and manual intervention. Moreover, access to the limited information BA-NY

chooses to disclose about the loop is further constrained by BA-NY's own geographic and service deployment plans. For those loops not in the database, BA-NY only offers access to loop make-up information on a manual basis, which takes substantially longer once "ordered" by the CLEC.

ACCESS TO CLEAN COPPER LOOPS AT REASONABLE AND NON-DISCRIMINATORY RATES, TERMS AND CONDITIONS

45. For most types of DSL technologies, the loop used must be "clean copper," that is, consist of all copper (*i.e.*, no fiber), be free of devices such as load coils, repeaters, and Digital Loop Carrier systems, and contain only a limited amount of bridged taps. As we demonstrate below, there is no question that it is "technically feasible" to remove problematic electronics from the loop or to otherwise address the need for "clean" copper to provision xDSL services.

46. BA-NY's description of DSL loop availability, however, indicates that it is severely limiting the ability of data CLECs—such as Rhythms—to deploy DSL technologies over unbundled loops. Specifically, while BA-NY claims it "provides unbundled loops that are designed specifically to provide DSL services,"[20] its DDL Tariff limits both the loops that may be used to provide DSL services ("... the analog two-wire link should not be used in the provision of ADSL or HDSL Services ..."[21]) and the technologies that may provided over its DSL unbundled loop offering.

[20] *Application*, Application by Bell Atlantic – New York for Authorization to Provide In-Region, InterLATA Services in New York (Sept. 29, 1999) at 22 [herein "BA Brief"].

[21] DDL Tariff at § 5.5.1.1(A)(1)(b).

47. Specifically, BA-NY's definition of an ADSL loop limits the top transmission speeds to 6 million bits per second ("Mbps") upstream and 640 thousand bits per second ("Kbps") downstream.[22] There are no technical reasons for these restrictions. Indeed, Rhythms is capable of providing DSL services at transmission rates of 7.1 Mbps downstream and 1 Mbps upstream. In fact, BA-NY offers its InfoSpeed™ DSL service with downstream speeds of up to 7.1 Mbps,[23] over 1 Mbps faster than it will permit CLECs to provide. Worse still, however, is that BA-NY is seeking to limit the downstream speed CLECs can provide to 640 Kbps, much slower than the 1.1 Mbps Rhythms is capable of providing using ADSL technologies.[24] Perhaps not coincidentally, 640 Kbps is approximately the same maximum downstream speed that BA-NY offers with its InfoSpeed™ DSL service (680 Kbps[25]). Thus, BA-NY is seeking to anticompetitively and discriminatorily restrict CLECs' ability to provide DSL services that are either equal to or superior to the DSL services BA-NY offers at retail.

48. For a loop to be capable of carrying the full range of advanced, high-bandwidth digital services, it must be clean copper end-to-end from the ILEC central office or remote terminal to the end user's premises. We use the term "clean copper" to refer to a copper loop that is free of load coils, repeaters, and DLC systems.[26] The "clean copper" terminology allows a limited amount of bridged taps on the copper loop in question. By definition, loops that are

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[22] *Id.* at § 1.3.

[23] The Bell Atlantic Telephone Companies Tariff F.C.C. No. 11 § 17.4.3 (Issued April 27, 1999) [hereinafter "BA InfoSpeed Tariff"].

[24] DDL Tariff at § 1.3.

[25] BA InfoSpeed Tariff § 17.4.3(C).

[26] BA-NY deploys a technology known as Digital Added Main Line ("DAML"). BA 271 State Case, Technical Conference (July 29, 1999) Tr. at 3720-3721. DAMLs are devices that are placed in the distribution portion of the loop plant and are used to derive two voice-grade POTS circuits from a single copper pair. The presence of DAMLs precludes the use of a loop to support most xDSL technologies.

carried in whole or in part on fiber systems are not "clean copper" loops. Indeed, for ADSL, both BA-NY and Rhythms will have to use a "clean" (no load coils, no repeaters, minimal bridged taps, and no DLC systems) 2-wire copper loop from the customer premises to a BA-NY central office.

49. The presence of load coils, bridged taps, repeaters, and DLC systems on a loop preclude or impair the use of xDSL on the loop. Each of these devices or technologies allows analog POTS signals to be transmitted over the loop in question. Indeed, devices such as load coils and repeaters have been deployed historically in the loop plant to extend the useful reach of a loop to be used for POTS services. Absent such devices, the POTS voice signal could become too attenuated, or faint, on very long loops. However, these same devices and technologies preclude or degrade xDSL signals on a copper loop. We discuss each of these in detail in Exhibit "EHG-RW-8" (attached) and demonstrate that it is not only "technically feasible" to "clean up" the copper, but also that it is not overly difficult to do so. Thus, BA-NY should make clean copper loops available to CLECs for the provision of high-speed data services.

50. It is important to keep in mind that, regardless of any difference between DSL-based services Rhythms provides, and the DSL services BA-NY provides, both Rhythms and BA-NY need "clean" copper loops to provide these services. Thus, there is no technical reason why BA-NY cannot offer CLECs "clean copper loops" for CLEC provision of DSL services.

51. Accordingly, clean loops should be provided to CLECs without unnecessary delay or expense. If Rhythms must wait for BA-NY to "condition a loop," *e.g.*, remove load coils, bridged taps or repeaters, in situations which are technically unnecessary, the provisioning

time for that loop will naturally increase. Rhythms thus will be delayed in its ability to offer services to the end user.

52. In addition, as made abundantly clear by BA-NY's DDL Tariff, Rhythms will be also have to expend significant financial resources for BA-NY to perform services to a loop that are not necessary. Although BA-NY claims it will "de-condition" loops at the CLEC's request in order to provide "clean" copper loops, for example, between 18,000 and 30,000 feet,[27] this assertion is highly misleading. BA-NY's "proposal" to offer such conditioning has not been approved by the NYPSC and in fact is presently the subject of an ongoing investigation. Rhythms and others have highlighted significant concerns both with the terms and conditions and with the rates in BA-NY's DDL Tariff.[28] For instance, the de-conditioning options contained in the DDL Tariff are presently offered only at exorbitant, non-cost based rates and with no explicit intervals. For example, if Rhythms ordered a DDL loop that was 25,000 feet long and that required removal of load coils and multiple bridged taps, BA-NY would charge Rhythms a non-recurring charge of $2973.55 for the loop qualification and de-conditioning, plus any other non-recurring charges applicable to ordering and provisioning of unbundled loops generally as well as the monthly recurring charges.

[27] Application at 20; Lacouture-Troy Decl. ¶ 83. BA-NY terms this offering its "Digital Designed Link" or "DDL". *See* DDL Tariff § 5.5.1.1(D).

[28] *See* Murray Affidavit, attached at Exhibit "EHG-RW-5," and Donovan/Riolo Affidavit, attached at Exhibit "EHG-RW-6," which detail the numerous shortcomings of BA-NY's DDL Tariff.

Removal of Load Coils (up to 27,000 feet)	$1,814.49
Removal of Multiple Bridged Taps	$945.39
Engineering Query	$123.67
Engineering Work Order	$81.00[29]
Total:	$2973.55

53. Any charges for de-conditioning loops must be based on forward-looking, TELRIC costs. Since *forward looking* DSL loops would be "clean" copper, charges associated with de-conditioning should be nominal. In addition, CLECs must not be charged for removal of nonstandard equipment that BA-NY may have placed on the line. Accordingly, BA-NY's proposed non-recurring charges are currently being challenged by Rhythms and other parties and are the subject of an NYPSC hearing scheduled for Nov. 3, 1999.

54. BA-NY's proposed unreasonable de-conditioning charges show that, while BA-NY no longer refuses outright to provide CLECs with DSL capable loops that BA-NY chooses not to use in its retail DSL offering, BA-NY continues to adopt practices designed to limit CLECs to loops of the same characteristics that BA-NY chooses to use to provide its retail DSL service. In other words, the only loops that BA-NY intends to make readily available for DSL are designed to meet the simplified version of DSL that its retail arm will offer in New York. Compounding these restrictions is the fact that BA-NY uses line-sharing to provision its retail DSL offering while refusing to permit CLECs to line-share, thereby further restricting the loops BA-NY will permit CLECs to use to provide DSL services.

55. Further compounding the clear competitive harm of the ridiculously high non-recurring charges is that BA-NY generally fails to provide the interval in which it will

[29] DDL Tariff § 5.5.2.

provide the several thousand dollar de-conditioning services.[30] The time entailed in obtaining a "clean" loop is therefore likely to be unreasonably extended.

COPPER LOOP PROVISIONING INTERVALS

56. In order to meet the expectations of our customers, Rhythms must be able to obtain and provision copper loops from BA-NY at least as quickly as they are provided to BA-NY's retail arm. Since copper loops provisioned for DSL are technically indistinguishable from other UNE loops, BA-NY should be required to provision those loops within the standard interval for UNE loops. According to the CLEC handbook, analog loops are provisioned within five (5) business days. Based, however, upon the DDL Tariff and clarifying statements made by BA-NY during the DSL collaborative, the entire provisioning interval for a DSL loop (absent de-conditioning) may be as long as 14 business days.[31] If de-conditioning is required, an unknown number of days must be added.

57. The loop provisioning interval becomes even more critical in light of the extended time BA-NY takes to provide collocation to CLECs. When Rhythms first began negotiations with BA-NY, BA indicated that it had no set date for deployment of its retail DSL services. Before Rhythms can order a loop for DSL services, it must first obtain collocation from BA-NY. Because BA-NY provisioning intervals for collocation are lengthy and because BA-NY is not subject to the requirement of collocation for its own retail service provisioning, in the time that Rhythms waited for BA-NY to complete Rhythms' collocations, BA-NY geared-up for its large scale June 1999 roll-out of its InfoSpeed™ DSL service in New York. Thus, BA-

[30] The only de-conditioning interval provided by BA-NY in its DDL Tariff is that, when a CLEC orders less than 10 DDLs, BA-NY will take an additional 15 business days to de-condition the loop on top of the other intervals prescribed in the DDL Tariff. DDL Tariff § 5.5.3. For all other loops necessitating de-conditioning, and for situations where 10 or DDLs are ordered, BA-NY offers no de-conditioning intervals.

NY successfully used its control over collocation to delay Rhythms' entry and mitigate any crucial "first in" competitive advantage. Therefore, BA-NY must not be permitted to further slow Rhythms' provision of DSL services to New York consumers through protracted loop provisioning intervals.

58. Where loops require one-time de-conditioning to remove intervening devices, BA-NY should be required to provide loops in the same interval as loops requiring a dispatch, but in any event no more than seven days.

59. Thus, BA-NY must be required to provision xDSL loops within no more than the UNE loop interval of five (5) business days. De-conditioned loops should be provided within 7 days, or within the same interval such loops would be provided to BA-NY's retail unit, whichever is shorter.

BA-NY'S RECURRING PROBLEMS IN PROVISIONING DSL LOOPS TO CLECS

60. As noted above, Rhythms began ordering DSL loops from BA-NY in March 1999. From this point until today, Rhythms has experienced a constant stream of problems in obtaining DSL loops from BA-NY. Rhythms' earliest experiences are detailed in the Affidavit of Paul Bannwart filed in the BA-NY 271 State Case on April 28, 1999.[32] Among the numerous difficulties cited by Mr. Bannwart in describing the problems Rhythms experience with its first 4 DSL loop orders in New York was that BA-NY did not provide timely firm order confirmations ("FOCs") to Rhythms. At the Technical Conference on July 29, 1999, Mr. Geis testified that these and other provisioning issues continued to impede scalable roll-out of DSL in

[31] 14 Business Days = 1 business day to return an FOC for a Mechanized Loop Qualification + 3 business days to perform a Manual Loop Qualification + 3 business days to perform an Engineering Query + 6 business day (standard) DSL provisioning interval.

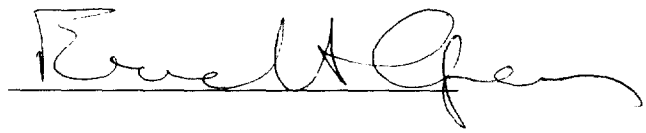
[32] Vol. 49, Tab. 759 at ¶¶ 20-24.

New York.[33] These include a persistent problem with unexplained "no facilities" rejections by BA-NY which necessitate numerous supplements to an order, multiple escalations or virtually every loop order, the inability of BA-NY to provide accurate and timely special billing numbers ("SNBs"), and protracted or lengthy FOCs. These problems continues to plague Rhythms today.

61. Similarly, Rhythms has repeatedly experienced numerous other provisioning problems, including among others (i) receiving untimely due date information from BA-NY, (ii) BA-NY technicians failing to show up for an installation, (iii) BA-NY technicians failing to identify the cable pair at the minimum point of entry; (iv) BA-NY technicians installing the loop to the wrong end-user location; and (v) being denied access to ADSL loops on the grounds that they are over 18,000 feet and thus in BA-NY's opinion too long. Denial of long loops is especially problematic given that Rhythms frequently learns after the installation is complete that the loop is actually less than 18,000 feet. While Rhythms has requested BA-NY implement procedures designed to ensure that these problems do not recur, BA-NY's failure to date to implement such procedures continues to require Rhythms to escalate almost every single DSL order placed with BA-NY. Consequently, Rhythms must spend considerable resources in terms of both time and money in order to obtain from BA-NY loops that even BA-NY recognizes it must provide.

[33] Vol. 58, Tab 887, Tr. 3825-3833.

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.



Eric H. Geis
Rhythms Links Inc.
6933 South Revere Parkway
Englewood, CO 80112

Dated: October 19, 1999

I hereby swear, under penalty of perjury, that the foregoing is true and correct, to the best of my knowledge and belief.

Robert Williams
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Dated: October 19, 1999